

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE

CLIFFORD POLLARD TURNER

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MISC. NO. C-07-019

**MEMORANDUM AND RECOMMENDATION TO DISMISS**

Movant is a state prisoner incarcerated at the Montford Unit in Lubbock, Texas. Pending are his motions to proceed *in forma pauperis*. (D.E. 1, 4, 7). For the reasons stated herein, it is respectfully recommended that the Court dismiss plaintiff's action for failure to prosecute.

**I. BACKGROUND**

Proceeding *pro se*, movant filed his first motion on February 15, 2007. (D.E. 1). On February 20, 2007, he was ordered to file a copy of his inmate trust account statement as well as a copy of the complaint or petition in his action. (D.E. 2). On March 6, 2007, he filed a copy of his inmate trust account statement. (D.E. 3). On March 8, 2007, he filed a second motion to proceed *in forma pauperis*. (D.E. 4).

On March 21, 2007, this Court issued an Order to Show Cause why plaintiff's action should not be dismissed for want of prosecution, or alternatively, for plaintiff to correct the deficient pleading. (D.E. 6). On April 2, 2007,

petitioner filed his third motion to proceed *in forma pauperis*. (D.E. 7). However, he again failed to file a complaint or a petition concerning his action.

Indeed, it is unclear who movant seeks to sue. In his first and third motions, he names the United States Department of Justice as the defendant. (D.E. 1, 7). In his second motion, he names the United States Bankruptcy Court as the defendant. (D.E. 4). Moreover, he lists an unknown case number in each motion: 5:06-CV-0089-C. This is not a case number from this Court involving the movant.

To date, plaintiff has failed to show cause why this action should not be dismissed for want of prosecution, or to submit his complaint or petition in the action for which he seeks to proceed *in forma pauperis*.

## **II. DISCUSSION**

An action may be dismissed if the plaintiff fails to prosecute it, or to comply with any court order. Fed. R. Civ. P. 41(b); see also Martinez v. Johnson, 104 F.3d 769, 772 (5th Cir. 1997) (holding district courts have the power to sua sponte dismiss a cause of action for failure to prosecute). ““The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the [d]istrict [c]ourts.”” Martinez, 104 F.3d at 772 (quoting Link v. Wabash R.R., 370 U.S. 626, 630-31 (1962); McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988)).

Plaintiff has failed to take any action in response to this Court's orders to file a copy of the petition or complaint in his action. This pleading is necessary to determine whether this Court has jurisdiction over plaintiff's action. More important, all litigation against governmental entities by prisoners is required to be screened. 28 U.S.C. § 1915A(a). Without a complaint or a petition, this screening cannot be done. It is therefore respectfully recommended that the Court dismiss plaintiff's action for failure to prosecute.

### **III. RECOMMENDATION**

For the foregoing reasons, it is respectfully recommended that the Court dismiss plaintiff's action for failure to prosecute.

Respectfully submitted this 19th day of April 2007.

  
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BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 02-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within **TEN (10) DAYS** after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).